

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CIVIL ACTION NO. 2009-cv-00622 (WOB)

JAMES L. BENNETT

PETITIONER

VS.

ORDER

WARDEN, Lebanon
Correctional Institute

RESPONDENT

This matter is before the court upon the Report and Recommendation of the United States Magistrate Judge (Doc. 24), and having considered de novo those objections filed thereto by petitioner (Doc. 28), and the court being sufficiently advised,

IT IS ORDERED that:

(1) The objections to the Report and Recommendation of the Magistrate Judge be, and are, hereby **OVERRULED**; and that the Report and Recommendation of the Magistrate Judge be, and it is, hereby **ADOPTED** as the findings of fact and conclusions of law of the court. The Court **ISSUES** a conditional writ of habeas corpus on Ground Two of Petitioner's petition, as well as the ineffective assistance of counsel claims alleged in Grounds Four and Five pertaining to establishing "cause" for the procedural default of the claim alleged in Ground Two in the state courts. The State of Ohio shall release Petitioner from custody unless, **WITHIN NINETY (90) DAYS AFTER ISSUANCE OF THE WRIT**, the State of Ohio vacates the inappropriate multiple convictions and resentences Petitioner in accord with this Order;

(2) Petitioner's motion for extension of time (Doc. 26) be, and is hereby, **GRANTED NUNC PRO TUNC**;

(3) For the reasons stated in the Report and Recommendation, Petitioner's motion for a certificate of appealability be, and is hereby, **DENIED** as to claims alleged in Grounds One, Three, Four and Six through Nine of the petition; and

(4) A separate Judgment shall enter concurrently herewith.

This 15th day of March, 2011.



Signed By:

William O. Bertelsman *WOB*

United States District Judge